

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FAVOURED DEVELOPMENTS)	
LIMITED,)	
)	No. C06-2752 MJJ (BZ)
Plaintiff(s),)	
)	REPORT AND RECOMMENDATION ON
v.)	DEFENDANT'S MOTION FOR
)	ATTORNEYS' FEES AND COSTS
ALTON A. LOMAS, et al.)	
)	
Defendant(s).)	
_____)	

By order dated April 19, 2007, the Honorable Martin J. Jenkins referred to me for report and recommendation defendant's motion for \$194,994.50 in attorneys' fees and costs. Defendant's motion is premised on Judge Jenkins' order dismissing plaintiff's complaint pursuant to Federal Rule of Civil Procedure 41(a)(2). Docket No. 39. Therein, Judge Jenkins granted defendant's request to seek attorneys' fees and costs "for unnecessary expenses caused by the litigation." Id. at 6 (citing Koch v. Hankins, 8 F.3d 650, 651 (9th Cir. 1993)). Having reviewed the papers, I find no need for argument and vacate the hearing scheduled for May 30, 2007.

1 In Koch, the Ninth Circuit held that "a defendant is
2 entitled only to recover, as a condition of dismissal under
3 Fed.R.Civ.P. 41(a)(2), attorneys fees or costs for work which
4 is not useful in continuing litigation between the parties."
5 8 F.3d at 652. The Circuit reversed the district court's
6 award of attorneys fees because the bill of costs set forth
7 only lump sum amounts for categories of work, and provided no
8 basis for determining whether or to what degree the work would
9 have been useful in the continuing litigation. Id.

10 In light of defendant's papers,¹ I conclude that I cannot
11 conduct a proper Koch analysis. For one thing, I find that
12 the categories of work utilized by defendant to summarize its
13 billing provide little indication as to what information was
14 gleaned from the work, and whether or how that information may
15 be useful in the forthcoming arbitration. Unsworn
16 proclamations that the work included within a category has no
17 on-going use are conclusory and are not meaningful. And while
18 defendant provides with his reply some sworn explanation of
19 the uselessness of some of the work, those explanations relate
20 to a very few of the subcategories.

21 Moreover, even if defendant's Koch showing is sufficient
22 as to some work categories, the record precludes me from
23 assessing the reasonableness of the requests. "The most
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25 ¹ In its opposition, plaintiff objected to my order
26 allowing defendant to file a reply brief. While I know of no
27 authority barring me from ordering the briefing I find
28 necessary to resolve the questions before me, plaintiff's
concerns may have been prescient since the reply included much
material which arguably belonged in the motion. In view of
this disposition, plaintiff's objection is **OVERRULED**, as is his
request for leave to file an amended opposition.

1 useful starting point for determining the amount of a
2 reasonable fee is the number of hours reasonably expended on
3 the litigation multiplied by a reasonable hourly rate.”
4 Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). As the party
5 seeking attorneys’ fees, defendant bears the burden of
6 submitting evidence to support the hours worked and rates
7 claimed. Id. at 433. No billing records or detailed
8 summaries were produced.

9 Plaintiff does not quibble with defendant’s rates. The
10 billing summaries provided by defendant, however, do not state
11 which attorneys or paralegals worked on which subcategorized
12 task, or whether more than one attorney and/or paralegal
13 worked on a task. Thus, I cannot determine how many hours
14 were spent on each task, or whose hours were deployed for
15 what. The cost breakdown also lacks specificity as to the
16 relationship between the costs requested and the work tasks
17 performed.² All these concerns are heightened by the
18 substantial size of the request given the limited amount of
19 work that seems to have been done on the case as reflected by
20 the court’s docket.

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25 ² The lack of specificity of defendant’s summaries is
26 particularly troubling in the Koch context. For example, I may
27 agree with defendant that the information produced by work
28 subcategories 1(a) through 1(e) has no on-going use. I may,
however, disagree as to subcategories 1(f) through 1(h).
Because defendant has given only lump sum fee figures for all
of category one, I have no way of separating out the fees by
subcategory to recommend a proper award.

1 For the reasons stated herein, I recommend **DENYING**
2 defendant's request for attorneys' fees and costs.

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4 Dated: May 17, 2007

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Bernard Zimmerman
United States Magistrate Judge

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